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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 676

STOWE SPINNING COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

PAUL C. WHITLOCK,
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Stowe Spinning Company respectfully petitions for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit to review an order and decree of said Court entered in the case of *National Labor Relations Board* v. *Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company and Linford Mills, Inc.*, on December 22, 1947 (R. 137), enforcing an order of the National Labor Relations Board (hereinafter called the Board) entered August 26, 1946 (R. 21), which directed petitioner to cease and desist from certain unfair

labor practices under the National Labor Relations Act (hereinafter called the Act) 49 Stat. 449; 29 U. S. C. Supp. V, Sec. 151 *et seq.*, and to reinstate the employees and make them whole, and to post notices.

The opinion of the Circuit Court of Appeals (R. 137) is as yet unreported. The decision and order of the Board (R. 1) are reported at 70 N. L. R. B. 614.

Statement of Matter Involved

Pursuant to charges and amended charges by the Textile Workers Union of America, C. I. O., the National Labor Relations Board on the 3rd day of October, 1945, issued its complaint and notice of hearing against Stowe Spinning Company, Acme Spinning Company, Perfection Spinning Company and Linford Mills, of North Belmont, North Carolina, which were duly served. The complaint alleged in substance (a) that the defendants had engaged in unfair labor practices affecting commerce within the meaning of Sec. 8(1) and (3), and Section 2(6) and (7) of the Act (R. 1 & 2), by denying to the employees of Stowe Spinning Company and to the union the use of a building owned by the four companies, for the purpose of self-organization and concerted activities for the purposes of collective bargaining or other mutual aid or protection; and (b) that Stowe Spinning Company, one of the respondents, had engaged in unfair labor practices by discharging and refusing to reinstate certain of its employees on account of their union activities. A hearing was held on the 15th and 16th of October, 1945, and following the intermediate report of the Trial Examiner the matter was heard by the Board and on the 26th day of August, 1946, the Board rendered its decision (R. 1), finding against the four respondents with respect to the use of the hall, and against the respondent Stowe Spinning Company with respect to the discharge

of its employees, issued appropriate cease and desist orders and an order to Stowe Spinning Company requiring it to offer to reinstate the discharged employees and make them whole (R. 21).

The Board filed in the Circuit Court of Appeals for the Fourth Circuit a petition for enforcement of its orders (R. 129), and the case was heard by that Court on November 21, 1947. That Court denied enforcement of the Board's order with respect to the use of the hall, but held that the Board's findings that Stowe Spinning Company committed labor practices in violation of Section 8(3) of the Act by discriminatorily discharging four employees: George W. Gainey, Mabel Gainey, Emma Louise Gainey, and John R. Hall, were supported by substantial evidence and ordered enforcement of the Board's order against Stowe (R. beginning with second paragraph on page 145).

Statement Disclosing Basis of Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (43 Stat. 938; U. S. C. Sec. 347(a)), and Section 10(e) and (f) of the Act. The decree of the United States Circuit Court of Appeals for the Fourth Circuit to be reviewed was entered on December 22, 1947 (R. 137).

The findings and conclusions of the court below present for determination a federal question in a way that is in conflict with applicable decisions of this Court.

Statute Involved

The pertinent provisions of National Labor Relations Act (49 Statute 449; 29 U. S. C. 1940 ed., Sec. 151 *et seq.*), which are as follows:

Sec. 157. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bar-

gain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 158.

It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 157 of this title.

• • • • • • •

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

• • • • • • •

Sec. 160.

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 158) affecting commerce. • • •

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. • • •

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument.

If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. • • •

(e) • • • The findings of the Board as to the facts, if supported by evidence, shall be conclusive. • • •

Question Presented

Whether there is substantial evidence in the record to support the Board's findings that the four employees whom the Board ordered Stowe Spinning Company to reinstate and make whole were discharged by that company because of their union activities.

Reasons Relied On for the Allowance of the Writ

That the Circuit Court of Appeals has decided the question in a way in conflict with applicable decisions of this Court to the effect that the findings and conclusions of the Board as to facts must be supported by substantial evidence.

N. L. R. B. v. *Link Belt Co.*, 311 U. S. 584; *Consolidated Edison Co.* v. *N. L. R. B.*, 305 U. S. 197, 229; *Seago* v. *New York Central R. Co.*, 315 U. S. 781; *N. L. R. B.* v. *Waterman S. S. Corp.*, 309 U. S. 206; *Washington, Va. and Md. C. C.* v. *N. L. R. B.*, 292 U. S. 282-6-7.

We submit that the court was clearly in error, and that the Board's findings that Stowe Spinning Company discharged and refused to reinstate the four employees mentioned above because of their union activities in violation of

Section 8(3) of the Act were not supported by substantial evidence.

While it is the Board's function to find the facts, its findings, in order to stand as a basis for the pains and penalties visited on the employer, must be based on substantial evidence.

Substantial evidence has been defined by this Court as follows: "Substantial evidence is more than a mere scintilla, it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Company* v. *N. L. R. B.*, 305 U. S. 197, 229.

We submit that the evidence on which the Board based its findings and conclusions in the instant case does not meet the test, and that the court below did not observe the rule laid down by this Court.

The evidence at most was a mere scintilla, incapable of creating in a reasonable mind more than a suspicion.

Reviewing the evidence briefly—

With respect to John Hall, the Board found (R. 13):

> "On the morning of February 10, 1945, Mr. Hall arrived at 6:45. About half an hour later, having completed doffing several frames, Hall went home for breakfast as usual. When he returned, about half or three-quarters of an hour thereafter, Second Hand Childers told Hall that he would have to stay on his job and 'run it better'. This was the first time Childers had reprimanded Hall. A few minutes later Overseer John A. McCarn approached Hall and also told him that he would have to stay on the job. Hall became angry; and raised a question concerning the nature of the work he was required to do on the second shift, stating, according to his own testimony, that 'before I would be around piecing up behind the doffers, I would quit.' McCarn testified that Hall said merely, 'I quit,' that McCarn then said, 'All right,' whereupon Hall declared that he would not quit. McCarn said, accord-

ing to his own testimony, 'You done quit,' and added, according to Hall's unrefuted testimony: 'Well you empty my house and I will call it not running your job.' "

The Board ignored the uncontradicted testimony of McCarn that when he came through the room around 8:30 in the morning the second hand told him "that John Hall went out and he couldn't find him, and the frames stopped, and he didn't know he was gone, and that he had started the doffers in . . ." (R. 52.)

The power of the Board to decide facts does not authorize it to ignore undisputed material facts. *N. L. R. B.* v. *Thompson*, 6 Cir., 162 F. 2d 287.

McCarn approached Hall, according to the undisputed evidence, after being advised that Hall was neglecting his job. This apparently made no impression on the Board, yet it is a most important fact, in that it explains McCarn's reprimand of Hall, and the conversation which followed, resulting in the termination of Hall's employment. Hall, at the time, made no mention of any thought that he was discharged because of his union activities. The circumstances indicate that this was an afterthought. It is perfectly clear that McCarn reprimanded Hall for the reason that Childers had informed him (rightly or wrongly) that Hall had been neglecting his job and that Hall resented this and "flew off the handle" and said he would quit before he would continue to do the work he had been doing for two months or so.

The facts, according to Hall's own testimony, are that he delivered an ultimatum and that the company refused to accede to his demand.

Stowe contends that the only reasonable inference from the testimony of Hall himself was that the termination of his employment was the impasse caused by the delivery of his ultimatum after he had been reprimanded by his su-

perior. He said: "I told him before I would piece up behind the doffers I would quit . . . And he told me that I would remain that way, and I told him I would quit . . . I told him I would quit before I would piece up behind the doffers, that it wasn't my job . . . I told him I wouldn't quit if they would keep me from piecing up, but I told him that I would quit before I would piece up behind the doffers" (R. 94-95). Hall testified that he had been piecing up ever since he took the first shift job as head doffer, some two or three months, and had made no complaint, and that he decided to quit piecing up when McCarn jumped on him about running his job. He said he was angry and "flew off the handle," that he was the only one who showed any signs of being mad and that he said he would quit before he would keep on doing the work he had been doing for the last two months or so (R. 126-127).

We respectfully submit that the account of what took place given by Hall himself does not rise to the dignity of a scintilla of evidence much less substantial evidence that he was discharged for union activities, but that it clearly shows on the contrary that he took an arbitrary stand that he would not work longer if he was required to piece up, and in anger maintained it, and that, upon the overseer's refusal to accede to his demand, he refused to work any longer. It is quite clear that had he consented to continue to piece up as he had been doing he would not have been discharged.

The conclusion of the Board that Hall was discharged on account of his union activities is based on an inference without substantial basis.

As to the Gaineys,—

George W. Gainey, his wife, Mabel Gainey, his daughter, Emma Louise Gainey, and his son, Alfred Gainey all lived together in a house of the Stowe Company and worked for the Company in the mill village. On February 24, 1945, McCarn, an overseer, discharged a worker for unsatisfac-

tory work and Alfred Gainey, George's son, a doffer, quit his job in protest. McCarn tried to dissuade the Gainey boy from quitting and told him that if he quit it meant he and his whole family would be out of a job and would have to move. Young Gainey said, "Well, all right, we can move." The rest of the family were then given their time and required to vacate the company house. McCarn explained that they needed doffers and that if the family did not vacate the house young Gainey would be living in Stowe's house and working for another mill (R. 55-59). C. W. Kale, Superintendent of the Stowe mill, testified (R. 102), explaining the Company's policy with reference to allowing people to occupy its houses and work at other mills: "We expect and require the folks that live in our houses to work in our plant." That this was the policy of the mill is not contradicted, except by inference from the fact that exceptions had been made to the rule.

Under the statute and under the decisions of this Court the burden was on the Board to adduce substantial evidence to support its charges and we submit that the evidence upon which the findings against the Gaineys were based is lacking in substantiality.

Conclusion

It is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 13, 1948.